

Appeals from decisions of New Mexico State Office, Bureau of Land Management, rejecting high bids for competitive oil and gas leases. NM 54406 and NM 54994.

Set aside and remanded.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases:  
Discretion to Lease

Where a competitive oil and gas lease high bid is not clearly spurious or unreasonable on its face and the record fails to disclose a sufficient factual basis for the conclusion that the bid is inadequate, the decision will be set aside and the case remanded for compilation of a more complete record and readjudication of the bid. A justification memorandum that does not reveal the estimated minimum value for the parcel and sufficient factual data cannot support rejection of the high bid for the parcel.

APPEARANCES: Charles B. Read, president, Read & Stevens, Inc; Robert J. Uram, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Read & Stevens, Inc. (R&S), has appealed the decisions of the New Mexico State Office, Bureau of Land Management (BLM), which rejected the high bids of R&S for parcel 45 in the August 25, 1982, sale of competitive oil and gas leases, and for parcel 24 in the October 27, 1982, sale of competitive leases. In each decision the reason given for rejection was that the high bid was not adequate based on the presale evaluation.

Parcel 45 included lots 1, 2, 3, and 4, S 1/2 NW 1/4, S 1/2 sec. 4, T. 24 S., R. 29 E., New Mexico principal meridian, containing 558.94 acres. The R&S bid was \$47.56 per acre. Parcel 24 included lots 3 and 4, SE 1/4 NW 1/4, E 1/2 SW 1/4, N 1/2 SE 1/4 sec. 6, T. 22 S., R. 26 E., containing 279.67 acres. The R&S bid was \$14.66 per acre.

R&S states, in support of its appeals, that it sought the parcels as wildcat acreage, and although trends of the Morrow formation are in or near the tracts, no specific drill site can be justified at this time. R&S suggests that factors such as higher prices for oil and gas, a stronger gas market, and additional geological and geophysical studies which may define new trends or possible pay zones will allow drilling. R&S went on to state in its statement of reasons for IBLA 83-298:

The current over-supply of natural gas and oil has depressed prices throughout our industry. Lease bonuses on state sales, fee lands and federal lands have declined dramatically the past year because of reduced demand for hydrocarbons;

Drilling activity in this area has declined approximately 50% during the past year. In order for independent operators to explore for oil and gas, there must be incentives to encourage development. Lease bonuses have been adversely affected by the decline in drilling activity;

The high interest rates on money loaned for lease acquisitions have increased the cost of maintaining a land inventory for exploration and development. This means that leases must be held in inventory longer before development occurs which increases the cost of holding the leases by payments of additional annual rentals, and interest. These factors have adversely affected high prices previously paid for leases in areas of exploration;

The leases were offered at competitive bid and fair market value has always been determined by what a willing buyer would pay for a property on a given date by competitive bidding.

If a tract is offered for sale and it is the desire of the B.L.M. to put a minimum price on the acreage, then those conditions should be so stated in the advertisements. It would eliminate a lot of administrative, research, geological, and engineering expense on behalf of the purchaser who probably would not bid on the tract if it had an unreasonable minimum sale price. It is not profitable for us to have our successful high bids continually rejected by the B.L.M. If the B.L.M. thinks a tract is worth a minimum value and we do not agree with your minimum, then we will not bid on the tract and it will save a lot of administrative expense for both the Land Office and the purchaser.

Based on consideration of such factors as a business risk, R&S believes that it cannot justify a bid of greater than \$47.56 per acre for parcel 45, and \$14.66 for parcel 24.

In its memorandums of October 4, 1982, and November 17, 1982, the Mineral Management Service (MMS) provided its justification for its

recommendations. 1/ Relative to parcel 45 in the August 25, 1982, sale, and parcel 24 in the October 27, 1982, sale MMS made these comments:

Parcel 45 was evaluated based upon possible Morrow gas potential. A Morrow well was completed in April 1982 in section 6, two miles west of Parcel 45. Morrow completions also exist in sections 9 and 10 to the south. The Morrow well in section 10 has been plugged and abandoned after producing 1.8 BCF. A parcel in section 3, the adjoining section to the east of section 4, sold for \$1,138.89 in the April 27, 1982, sale. Another parcel in section 2, a mile to the east, sold for \$1,680 in the state lease sale on January 19, 1982. The presale evaluation for Parcel 45 was based on these factors, and is higher than the high bid of \$47.56 per acre submitted by Read & Stevens, Inc.

Parcel 24 is located adjacent to a parcel that received a \$3,002.50 per acre high bid in the August 26, 1981, lease sale (parcel 19), and is located in the vicinity of Morrow gas production. Although there are dry holes located approximately one mile to the north in sections 31 and 32, and a poor producer in section 7 just to the south of the parcel, there is an excellent gas well approximately 3/4 mile to the west which has produced 4.3 BCF. Other good Morrow wells exist to the east in sections 33, 4, 8 and 9. The presale valuation was based upon these factors and is considerably higher than the high bid received.

Counsel for BLM also submitted a copy of a March 2, 1983, memorandum from MMS to the Field Solicitor responding to the points raised by appellant concerning parcel 24.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. @ 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Harold R. Leeds, 60 IBLA 383 (1981); William C. Welch, 60 IBLA 248 (1981); Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977). See Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974).

In these cases MMS concluded that its presale evaluations for parcels 45 and 24 were "higher than" and "considerably higher than" the respective high bids for these parcels. However, the record does not disclose what the

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1/ On Dec. 3, 1982, the Secretary of the Interior issued Secretarial Order No. 3087 transferring all onshore minerals management functions to MMS, not relating to royalty management, to BLM. 48 FR 8982 (Mar. 2, 1983). - - - -

presale evaluation was or the computations upon which it was based. 2/ In Southern Union Exploration Co., 51 IBLA 89, 95 (1980), we stated:

Refusal to inform a good-faith appellant of the basis for the rejection of a high bid renders the right of appeal, which the Secretary has afforded, virtually meaningless. Regardless of whether or not an exemption is provided by the FOIA [Freedom of Information Act] which the Department might invoke, we hold that, except to the extent that the release of certain information is prohibited by law, an appellant who has submitted a high bid, which is not clearly spurious, must be informed not only of the estimated minimum values, but the subsidiary factual data which served as the predicate for the derivation of that estimate. [Emphasis in original.]

Recently, the importance of such information was underscored in Stephen M. Bess, 71 IBLA 122 (1983). In that case BLM rejected the appellant's high bid at a competitive oil and gas lease sale. In rejecting the bid as inadequate, BLM relied on the MMS recommendation. In arriving at a presale evaluation MMS had assessed oil and gas production within a 1-mile radius of the parcel in question. The MMS figures in the record showed monthly average production based on daily production figures; however, on appeal the appellant produced data which showed that the MMS' average daily production figures were equal to the average monthly production figures taken from operators' reports filed with the state. Thus, since MMS' presale evaluation was based on erroneous computations, we set aside the BLM decision and remanded the case.

Herein, appellant's bids are not spurious, and it has had no opportunity to refute the presale evaluations. 3/ Neither the presale valuations nor

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2/ Although MMS provided a point-by-point response to the statement of reasons in IBLA 83-298 for parcel 24, it still does not disclose its presale evaluation or its calculations. In its Mar. 2, 1983, memorandum, it stated that "[o]ur estimate of the fair market value (FMV) of this tract reflects the market conditions at the time of sale and the current estimated potential for recoverable hydrocarbons. We use published sources for our information are derivations using standard estimation techniques." This methodology and the actual calculations are nowhere disclosed in the record, however. As recently stated by Administrative Judge Stuebing in his concurring opinion in another competitive oil and gas lease high bid rejection case, Larry White, 72 IBLA 242, 247 (1983):

"However, since the record does not reflect the amount of each pre-sale evaluation or any cogent explanation of how each was calculated, it is impossible for this Board to make an informed judgment concerning the propriety of those evaluations, as we must do in cases of this kind. We cannot simply accept the correctness of all pre-sale evaluations as an article of faith and still preserve the integrity of this Board as an impartial tribunal for administrative review. For that reason, I concur in the main opinion."

3/ We note that in the Oct. 27, 1982, sale bids were received for 54 of the 58 parcels offered for sale. Bids on 30 parcels were higher than the presale evaluation. Bids on 24 parcels were lower than the presale evaluation;

their method of calculation has been disclosed to appellant or this Board. We are unable to determine the correctness of the BLM decisions without such information. This does not mean the Board will substitute its judgment for that of MMS in determining fair market value for the parcels, but rather that the Board will require sufficient facts and analysis to ensure that a rational basis for the determination is present. Snyder Oil Co., 69 IBLA 259 (1982); M. Robert Paglee, 68 IBLA 231 (1982).

Therefore, we remand these cases to BLM for readjudication of appellant's bids. If the bids are rejected again, BLM shall set forth the reasons for doing so, including the presale evaluation, so the Board can properly consider the issues in event of an appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded for further consideration consistent with this opinion.

Douglas E. Henriques

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Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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R. W. Mullen  
Administrative Judge.

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fn. 3 (continued)

however, high bids on 12 of those parcels were recommended for acceptance with justification provided in the Nov. 17, 1982, memorandum from MMS to BLM. For parcel 1 MMS stated:

"Parcel 1 was evaluated based on previous lease sale data. A parcel in the NE 1/4 of section 3, one mile to the west, received a lease bonus of \$432.95 in the October 28, 1981 lease sale. Primary production in this area is from the Pictured Cliffs formation. A dry hole was drilled on the parcel in July, 1978 which tested the Pictured Cliffs. Because of this dry hole, we depreciated the pre-sale value \* \* \*."

Thus, it would appear that a presale fact served as the basis for depreciating the presale value after the sale. Such revelations point out the necessity for revealing the methodology for arriving at presale evaluations where high bids are rejected.

